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MADISON'S FAMOUS ORIGINAL LETTER AGAINST NULLIFICATION 1832.

This is probably one of the most forcible letters ever written against the doctrine of Nullification proposed by South Carolina. The letter was really written as a reply to a speech by Col. Hayne of South Carolina in favor of Nullification. As an interpretation of the spirit and intention of the Constitution, coming from he who had much to do in framing that instrument this letter cannot help but be of vital historical importance.

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Dear Sir. Montpellier

"I return with my thanks the printed speech of Col. Hayne on the 4th of July last. It is blotted with many strange errors, some of a kind not to have been looked for from a mind like that of the author.

I cannot see the advantage of this perseverance of South Carolina in claiming the authority of the Virginia proceedings in 98-99, as asserting a right in a single State to nullify an act of the United States. Where indeed is the fairness of attempting to palm on Virginia an intention which is contradicted by such a variety of contemporary proofs; which has at no intervening period received the slightest countenance from her; and which with one voice she now disclaims. There is the less propriety in this singular effort, since Virginia, if she could, as is implied, disown a doctrine which was her own offspring, would be a bad authority to lean on in any cause. Nor is the imprudence less than the impropriety, of an appeal from the present to a former period, as from a degenerate to a purer state of political orthodoxy; since South Carolina, to be consistent would be obliged to surrender her present nullifying notions to her own higher authority when she declined to concur and co-operate with Virginia at the period of the Alien and Sedition laws. It would be needless to dwell on the contrast of her present nullifying doctrines, with those maintained by her political champions at subsequent and not very remote dates.

Besides the external and other internal evidence that the proceedings of Virginia occasioned by the Alien and Sedition laws do not maintain the right of a single State, as a party to the Constitution, to arrest the execution of a law of the United States, it seems to have been overlooked, that in *every* instance in those proceedings where the *ultimate* right of the States to interpose is alluded to, the *plural* term *States*, has been used; the term State as a single party being invariably avoided. And if it had been suspected that the term *respective* in the 3d Resolution would have been misconstrued into such a claim of an individual State or that the language of the 7th Resolution invoking the co-operation of the other States with Virginia * * * * * * would not be a security against the error, a more explicit guard would doubtless have been introduced. But surely there is nothing strange in a concurrence and co-operation of many parties in maintaining the rights of each within itself.

It would seem also to be deemed an object of importance, to fix the charge of inconsistency on me individually, in relation to the proceedings of Virginia in 98-99. But it happens that the ground of the charge particularly relied on, would at the same time exhibit the State in direct and pointed opposition to a nullifying import of those proceedings.

In the 7th Resolution which declares the Alien and Sedition laws to be "*unconstitutional*," this term was followed by "null, void and of no effect" which it is alleged express an *actual* nullification; and as they are ascribed to me, as the drawer of the Resolution, it is inferred that I must then have been a nullifier, tho' now disclaiming the character. These particular words, tho' essentially the same with unconstitutional, were promptly and unanimously stricken out by the House. Admitting that they were in the *original* draft of the Resolution, and assuming that they meant more than the term unconstitutional, amounting even to nullification, the striking them out turns the authority of the State precisely against the doctrine for which that authority is claimed.

Other, and some not very candid attempts, are made to stamp my political career, with discrediting inconsistencies. One of these is a charge that I have on some occasions, represented the Supreme Court of the United States as the judge in the last

resort, on the boundary of jurisdiction between the several States and the United States; and on other occasions have assigned this last resort to the parties to the Constitution. It is the more extraordinary that such a charge should have been hazarded; since besides the obvious explanation, that the last resort means in one case, the last within the purview and forms of the Constitution, and in the other, the last resort of all, from the Constitution itself, to the parties who made it; the distinction is presented and dwelt on both in the Report on the Virginia resolutions and in the letter to Mr. Everett, the very documents appealed to in proof of the inconsistency. The distinction between these ultimate resorts is in fact the same, within the several States. The *Judiciary there*, may in the course of its functions be the last resort within the provisions and forms of the Constitution; and the people, the parties to the Canstitution, the last in cases ultra constitutional, and therefore requiring their interposition.

It will not escape notice that the Judicial authority of the United States when overruling that of a State, is complained of as subjecting a Sovereign State, with all its rights and duties, to the will of a Court composed of not more than seven individuals. This is far from a true state of the case. The question would be between a single State, and the authority of a tribunal representing as many States as composed the Union.

Another circumstance to be noted is that the nullifiers in stating their doctrine omit the particular form in which it is to be carried into execution; thereby confounding it with the extreme cases of oppression which justify a resort to the original right of resistance, a right belonging to every community, under every form of Government, consolidated as well as federal. To view the doctrine in its true character, it must be recollected that it asserts a right in a single State, to stop the execution of a Federal law, altho' in effect stopping the law every where, until a Convention of the States could be brought about by a process requiring an uncertain time; and finally in the Convention when formed a vote of seven States, if in favor of the veto, to give it a prevalence over the vast majority of seventeen States. For this preposterous and anarchical pretension there is not a shadow of countenance in the Constitution; and well that there is not; for it is certain that with such a deadly poison in it, no Constitution could be sure of lasting a year, there having scarcely been a year, since ours was formed, without a discontent in some one or other of the States which might have availed itself of the nullifying prerogative. Yet this has boldly sought a sanction under the name of Mr. Jefferson, because in his letter to Major Cartwright he held out a Convention of the States, as, with us, a peaceable remedy in cases to be decided in Europe by intestine war. Who can believe that Mr. Jefferson referred to a Convention summoned at the pleasure of a single State, with an interregnum during its deliberations; and above all with a rule of decision subjecting nearly three fourths to one fourth. No man's creed was more opposed to such an inversion of the republican order of things.

There can be no objection to the reference made to the weakening effect of age on the judgment, in accounting for changes of opinion. But inconsistency at least may be charged on those who lay such stress on the effect of age in one case, and place such peculiar confidence, where that ground of distrust would be so much stronger. What was the comparative age of Mr. Jefferson, when he wrote the letter to Mr. Giles, a few months before his death, in which his language, tho' admitting an construction not irreconcileable with his former opinions is held, in its assumed meaning, to outweigh on the Tariff question opinions deliberately formed in the vigour of life, reiterrated in official reasonings and Reports; and deriving the most cogent sanction from his presidential messages, and private correspondence. What again the age of General Sumter, at which the concurrence of his opinion is so tri-

umphantly hailed? That his judgment may be sound as his services have been splendid, may be admitted; but had his opinion been the reverse of what it proved to be, the question is justified by the distrust of opinions, at an age far short of his, whether his venerable years would have escaped a different use of them.

But I find that by a sweeping charge, my inconsistency is extended to "my opinions on almost every important question which has divided the public into parties." In supporting this charge, an appeal is made to "Yates' Secret Debates in the Federal Convention of 1787," as proving that I originally entertained opinions adverse to the rights of the States; and to the writings of Col. Taylor of Caroline, as proving that I was in that Convention, an advocate for a *Consolidated National Government.*

Of the Debates, it is certain that they abound in errors, some of them very material in relation to myself. Of the passages quoted, it may be remarked that they do not warrant the inference drawn from them. They import "that I was disposed to give Congress a power to repeal State laws," and "that the States ought to be *placed under the control of the General Government,* at least as much as they were formerly when under the British King and Parliament."

The obvious necessity of a controul on the laws of the States, so far as they might violate the Constitution and laws of the United States, left no option but as to the mode. The modes presenting themselves, were first a veto on the passage of the State laws. Secondly a Congressional repeal of them, thirdly a Judicial Annulment of them. The first tho' extensively favored at the outset, was found, on discussion, liable to insuperable objections, arising from the extent of Country, and the multiplicity of State laws. The second was not free from such as gave a preference to the *third* as now provided by the Constitution. The opinion that the States ought to be placed not less under the government of the United States than they were under that of Great Britain, can provoke no censure from those who approve the Constitution as it stands with powers exceeding those ever allowed by the Colonies to Great Britain, particularly the vital power of taxation, which is so indefinitely vested in Congress, and to the claim of which by Great Britain a bloody war and final separation was preferred.

The author of the "Secret Debates," tho' highly respectable in his general character, was the representative of the portion of the State of New York, which was strenuously opposed to the object of the Convention, and was himself a zealous partizan. His notes carry on their face proofs that they were taken in a very desultory manner, by which parts of sentences explaining or qualifying other parts, might often escape the ear. He left the Convention also on the 5th of July before it had reached the midway of its session, and before the opinions of the members were fully developed into their matured and practical shapes. Nor did he conceal the feelings of discontent and disgust, which he carried away with him. These considerations may account for errors; some of which are self-condemned. Who can believe that so crude and untenable a statement could have been intentionally made on the floor of the Convention as "that the *several States* were political societies, *varying* from the *lowest corporations* to the *highest sovereigns*" or "that the States had vested *all* the *essential rights* of Government in the *old* Congress."

On recurring to the writings of Col. Taylor,* it will be seen that he founds his imputation against myself and Governor Randolph, of favoring a consolidated National Government on the Resolutions introduced into the Convention by the former, in behalf of the Virginia Delegates from a consultation among whom they were the result. The Resolutions imputed that a Government consisting of a *National* Legis-

lature, Executive and Judiciary, ought to be substituted for the Existing Congress. Assuming for the term *National* a meaning co-extensive with a single Consolidated Government he filled a number of pages, in deriving from that source, a support of his imputation.

* See "New Views," written after the Journal of the Convention was printed.

my opinion of the unconstitutionality of the Alien and Sedition laws.

With respect to the supremacy of the Judicial power on questions occurring in the course of its functions, concerning the boundary of judisdiction, between the United States and Individual States, my opinion in favor of it was as the 41st number of the Federalist shows, of the earliest date; and I have never ceased to think that this supremacy was a vital principle of the Constitution, as it is a prominent feature of its text. A supremacy of the Constitution and laws of the Union, without a supremacy in the exposition and execution of them, would be as much a mockery as a scabbard put in the hands of a soldier without a sword in it. I have never been able to see, that without such a view of the subject the Constitution itself could be the supreme law of the land; or that the *uniformity* of the Federal authority throughout the parties to it, could be preserved; or that without this uniformity, anarchy and disunion could be prevented.

On the subject of the Bank alone is there a color for the charge of mutability on a Constitutional question. But here the inconsistency is apparent, not real, since the change was in conformity to an early and unchanged opinion, that in the case of a Constitution as of a law a course of authorititative, deliberate and continued decisions, such as the Bank could plead, was an evidence of the public judgment, necessarily superseding individual opinions. There has been a fallacy in this case as indeed in others, in confounding a question whether precedents could expound a Constitution, with a question whether they could alter a Constitution. This distinction is too obvious to need elucidation. None will deny that precedents of a certain description fix the interpretation of a law, yet who will pretend that they can repeal or alter a law.

Another error has been in ascribing to the *intention* of the *Convention* which formed the Constitution an undue ascendancy in expounding it. Apart from the difficulty of verifying that intention it is clear, that if the meaning of the Constitution is to sought out of itself, it is not in the proceedings of the Body that proposed it, but in those of the State Conventions which gave it all the validity and authority it possesses.

With friendly salutations,

Mr. Trist. James Madison."

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